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WESTERN DISTRICT OF WASHINGTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

v.

LINDOWS.COM, INC.,

Defendant.

CASE NO. C01-2115C

ORDER

Microsoft Corporation, the world's leading producer of personal computer operating systems, alleges that Lindows.com's use of a "copy cat" trade name which differs by only one letter from Microsoft's senior Windows mark violates trademark law because Lindows.com is trading off of the goodwill of the Windows trademark, causing confusion among prospective purchasers of Windows products and diluting the ability of Microsoft's famous trademark to distinguish its products from those of other producers. Microsoft's complaint alleges causes of action for trademark infringement and unfair competition under the Lanham Act, 15 U.S.C. §§ 1114, 1125(a), and for violation of the Federal Trademark Dilution Act, a 1996 amendment to the Lanham Act, 15 U.S.C. § 1125(c). The complaint also includes a state law cause of action for violation of Washington's Unfair Business Practices statute, Wash. Rev. Code § 19.86.090. Microsoft seeks both injunctive relief and monetary damages. Presently

ORDER - 1

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1 before the Court, is Microsoft's Motion for Preliminary Injunction based on its Lanham Act claims
2 (Dkt. No. 3).

3 4 FACTS

5 6 I. Computer Terminology and Brief History of Windows-based Operating Systems

7 This case involves two competing operating system products: Microsoft Windows and Lindows
8 OS. An operating system is essentially the command center of a personal computer, controlling the
9 allocation and use of computer resources (such as central processing unit time and main memory and
10 disk space) and supporting the functions of software programs, or applications, that perform specific
11 tasks such as wordprocessing. See United States v. Microsoft Corp. (Microsoft I), 84 F. Supp. 2d 9, 12
12 (D.D.C. 1999);¹ Caldera, Inc. v. Microsoft Corp., 72 F. Supp. 2d 1295, 1297 (D. Utah 1999). When
13 software developers write software applications, they rely on pre-fabricated blocks of programming
14 code contained within a specific operating system, and as a result, an application written for a specific
15 operating system generally cannot be run on another operating system. See Microsoft I, 84 F. Supp. 2d
16 at 12-13, 20. Software applications' lack of cross-operating system compatibility presents a major
17 obstacle to entry into the operating system market, see id. at 19-22 (describing applications barrier to
18 entry), and provides the primary motivation for developing the Lindows OS product, see Robertson
19 Supp. Decl. ¶¶ 2-3.

21 The user interface is the combination of a computer monitor's visual displays with the user
22 command functions of the keyboard, mouse or other device. Apple Computer, Inc. v. Microsoft Corp.,

23
24 ¹ Although the Court of Appeals for the District of Columbia Circuit vacated the District Court's remedy order and
25 reversed in part the conclusions of law, it refused to set aside Judge Thomas Penfield Jackson's findings of fact after
26 reviewing them under the clear error standard. See United States v. Microsoft Corp. (Microsoft II), 253 F.3d 34, 46, 116-18
(D.C. Cir. 2001).

1 799 F. Supp. 1006, 1017 (N.D. Cal. 1992).² When a user interface incorporates significant graphical
2 features and functions, as Microsoft Windows does, it is referred to as a graphical user interface, or GUI
3 (pronounced “gooey”) in trade parlance. Id. In this case, the central issue is the “windowing” feature of
4 a GUI. Windowing refers to a GUI’s use of “overlapping windows to display multiple images on a
5 computer screen in order to facilitate organization of information and the user’s interaction with it.” Id.
6 at 1027 (describing the Apple Macintosh user interface). Windowing was a substantial breakthrough
7 because it permitted the user to run several applications simultaneously rather than reloading and
8 running separate programs. See Versatile – and Now Affordable – ‘Windows.’ Separate Display Areas
9 on a CRT Screen, Dun’s Business Month, Jan. 1984, at 119 (Park Decl. Ex. H). Central to the
10 windowing feature is the mouse, a now familiar device which controls an on-screen cursor and permits a
11 user to move from one window to another, thus accessing any of the open programs. See id.; Apple,
12 799 F. Supp. at 1017-18.

14 The personal computer revolution that took place in the late 1970s and early 1980s is a
15 captivating story in its own right, but most of it is beyond the scope of this Order. It suffices to note that
16 during this time period a number of now familiar companies were fiercely competing to develop and
17 market computers for use by individual consumers. Microsoft, Apple, IBM, Xerox and several other
18 companies were at the core of this rapid development of technology. The period also saw the
19 development of several user interfaces that featured overlapping windows, including Xerox’s Smalltalk
20 software and Apple’s Lisa and Macintosh operating systems. See id. at 1017-20; Park Decl. Exs. A-R.
21 In the early 1980s, IBM, which had previously produced large mainframe computers, entered the
22 competition with its Personal Computer, or PC. In doing so, it entered a business relationship with two
23

24
25 ²Although the Apple case was one for copyright infringement, Judge Walker’s discussion of the history of user
26 interfaces featuring windowing capabilities is relevant to the present action.